

Permit: USACE Permits No. 2007639065 and 200500229

### **FINAL ADMINISTRATIVE PENALTY ORDER**

Under the authority granted by 33 U.S.C. § 1319(g) and 33 CFR Part 326.6, I, Colonel John E. Pulliam, Jr., District Engineer, Wilmington District, issue this order assessing a Class 1 Administrative Penalty for violation of the above-referenced permit.

**Name/Address of Permittee:**

Mr. Karl Miller  
\_\_\_\_\_  
\_\_\_\_\_

**Permitted Activity:**

A permanent discharge of fill material into 0.038 acres of wetlands for the purpose of constructing a drainage swale (NWP 18) and a temporary discharge of fill material into 0.04 acres of wetlands for the purpose of establishing a construction corridor for home construction (NWP 33), at 243 and 245 Beech Street, in the City of Wilmington, New Hanover County, North Carolina, consistent with the application and plans for USACE Permits No. 2007639065 and 200500229.

**Condition(s) or Limitation(s) of Permit Reportedly Violated:**

Mr. Miller failed to comply with Special conditions 1 and 2, and General conditions 3, 5, and 9, of the subject permits. Special condition 1 relates to the creation of an on-site wetland creation project. Special condition 2 relates to recordation of a conservation declaration. General condition 3 relates to proper sedimentation and erosion control. General condition 5 relates to heavy equipment and soil disturbance. General condition 9 relates to water quality certification and standards.

**Description of the Nature of the Violation(s):**

- 1) Discharge of fill material for single and complete project exceeded authorized amount. Approximately 0.2 acres of additional jurisdictional wetlands were impacted by a discharge of fill and excavated material.

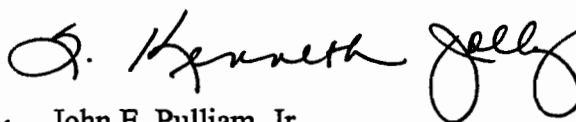
- 2) Failure to implement the on-site wetland creation as required by Special Condition 1 and described in the Restoration Plan;
- 3) Failure to implement the on-site preservation as required by Special Condition 2;
- 4) Failure to construct the drainage swale as designed and authorized (additional impacts occurred);
- 5) Failure to maintain proper sediment and erosion control to include the use of heavy equipment in wetlands without minimized soil disturbance (NWP General Conditions 3. and 5.);
- 6) Performance of approximately 30 linear feet of stream channel excavation with associated discharges from driveway/bridge downstream to coastal marsh;
- 7) Violation of the Terms and Conditions of Section 401 Water Quality General Certification 3402 (NWP General Condition 9);

It is my decision that a Class 1 Administrative Penalty in the amount of \$15,000 shall be assessed against the permittee. Permittee will pay the penalty by check, payable to FAO, USAED Wilmington, and delivered to the Office of Counsel, U.S. Army Engineer District, P.O. Box 1890, Wilmington, North Carolina, 28402, within 30 days from the effective date of this letter.

The issuance of this Order constitutes final U.S. Army Corps of Engineers action in this case for purposes of judicial review.

This order will become effective 30 calendar days following its issuance unless an appeal is taken pursuant to 33 U.S.C. § 1319(g)(8) or a hearing is granted. Since no hearing was held prior to the issuance of this Order, a prior commenter may file a petition for a hearing within the 30-day period.

Issued this 4 day of February 2008.

  
for John E. Pulliam, Jr.  
Colonel, U.S. Army  
District Commander